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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re A.R. et al., Persons Coming Under the Juvenile  
Court Law.

C083564

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. Nos. JD233447 &  
JD233448)

Plaintiff and Respondent,

v.

S.R.,

Defendant and Appellant.

S.R., mother of the minors, A.R. and M.S., appeals from the juvenile court's visitation order. (Welf. & Inst. Code, § 362.1.)<sup>1</sup> She contends there was insufficient evidence to support the order for supervised visitation. We affirm the juvenile court's order.

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<sup>1</sup> Unspecified statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **Prior Dependency History**

Mother and A.S. (father of both minors) came to the attention of the Sacramento County Department of Health and Human Services (Department) in May 2013 due to an altercation between them during which father became angry and threw a metal cigarette lighter at mother, hitting her in the face. The altercation occurred in front of A.R.

Speaking with a social worker, mother denied the minors were present during the altercation and minimized the incident, claiming it was an accident. Mother admitted domestic violence occurred in her prior relationships in the presence of A.R., and claimed she and father argued regularly but did “not usually get physical,” although she stated that she had yelled and screamed a lot and “[was] usually the aggressor.” She stated she would not obtain a restraining order or press charges against father, but agreed to have no physical contact with him or allow him into the home until the investigation was completed. Mother also stated she was previously diagnosed with bipolar and had been prescribed medication; however, she was no longer taking the medication due to being pregnant and nursing. Mother denied any use of illegal substances.

In June 2013, the Sacramento County Department of Health and Human Services (Department) filed an amended petition pursuant to section 300, subdivision (b), alleging anger management issues as to both parents, domestic violence between the parents in the presence of M.S. (then three months old) and A.R. (then three years old), and domestic violence involving mother and her prior partners in the presence of A.R.

In July 2013, mother was arrested and incarcerated in the county jail for 2008 charges including driving with a suspended license and refusal to take a blood-alcohol test, driving under the influence of alcohol and/or drugs, evading a police officer and driving in a reckless manner, and assault with a deadly weapon. She was eventually released in October 2013 and the charges were dismissed.

In August 2013, the juvenile court sustained the amended petition, adjudged the minors dependents of the juvenile court, and ordered them placed with the maternal uncle and aunt. The court further ordered reunification services to both parents, and regular visitation subject to the Department's discretion as to time, place, and manner, including the frequency and length of visits and whether visits would be supervised or unsupervised.

In November 2013, the juvenile court held a dependency drug court compliance hearing and found mother compliant.

Mother called police on January 30, 2014, and reported a domestic dispute with father.

At a January 2014 compliance hearing, mother was found noncompliant after admitting having used methamphetamines in December 2013.

At the subsequent February, March, April, May, and June 2014 compliance hearings, mother was found compliant. The court also found she completed the 90-day certification requirement in April 2014 and completed the 180-day graduation requirement in July 2014.

At the permanency hearing on February 14, 2014, the court found the minors continued out-of-home placement was appropriate, the parents' progress in their case plans was fair, and the parents had maintained regular and consistent contact and visitation with the minors. The court ordered regular visitation subject to the Department's discretion as to time, place, and manner, including the frequency and length of visits and whether visits would be supervised or unsupervised.

Mother began unsupervised visits with the minors in May 2014 and the following month she filed petitions requesting that the court modify its order pursuant to section 388 and return the minors to her on a plan of dependent supervision. The juvenile court granted mother's petitions and ordered that the minors be returned to mother's custody under the Department's supervision.

On August 13, 2014, the Department filed supplemental dependency petitions pursuant to section 387 seeking more restrictive placement of the minors. The petitions alleged mother struck A.R. in the face in the presence of M.S., giving A.R. a bloody nose, mother had a history of violence, and mother did not have sufficient coping skills to handle the challenging behaviors of the minors. The juvenile court detained the minors on August 18, 2014.

In December 2014, the juvenile court dismissed the section 387 supplemental petitions for insufficiency of evidence and returned the minors to mother under the Department's supervision.

In May 2015, on the Department's recommendation, the juvenile court terminated dependency jurisdiction and granted mother sole legal and physical custody of the minors.

### **Current Dependency Proceedings**

On March 28, 2016, the Department filed new dependency petitions pursuant to section 300, subdivisions (a), (b), and (c), alleging as follows:

As to the subdivision (a) allegation, the petitions alleged M.S. (then three years old) and A.R. (then six years old) were at risk of serious physical harm due to the parents' history of domestic violence in the minors' presence, including the most recent incidents during which (1) father forced his way into the home, grabbed mother by the face, slammed the back of her head into a wall, threw her against the floor, and covered her mouth, impeding her ability to breathe, and (2) mother pushed her hand into father's face after father threw mother's cell phone down the hallway.

As to the subdivision (b) allegation, the petitions alleged mother failed to protect the minors from acts of domestic violence including those alleged as to subdivision (a). It was further alleged that, despite mother's previous completion of court-ordered reunification services, family maintenance, and informal supervision services, mother allowed father to reside in the home with the minors despite father's failure to complete

prior court-ordered reunification services, his history of domestic violence, his ongoing methamphetamine abuse (most recently on Mar. 10, 2016, when he physically attacked mother in front of the minors), and his chronic criminal behavior, and despite the juvenile court's prior order that father only have supervised visitation with the minors due to his failure to complete services. It was further alleged mother had untreated anger management issues which impaired her judgment and ability to protect the minors, as evidenced by the fact that she regularly yelled at and used excessive profanity toward the minors, she hit A.R. out of frustration, and she engaged in a physical fight with another woman in front of the minors' home.

As to the subdivision (c) allegation, the petitions alleged the minors were at risk of serious emotional harm due to the parents' ongoing domestic violence. It was alleged A.R. was exhibiting aggressive behaviors, including excessive tantrums, biting, kicking, hitting, crying, sleep disturbances, school disruption, inability to focus, and aggression toward others. It was further alleged that M.S. had begun exhibiting tantrums, kicking, hitting, crying, and aggression toward others. The petitions also alleged the minors had been directly exposed to violence, had been forced to flee from their father, had been exposed to significant foul language being used toward them and others, and had not received any mental health services since May 2015.

The juvenile court ordered the minors detained on April 1, 2016. The court further ordered supervised visitation as to both parents and stated mother and father "shall visit separately" and "[t]he wishes of the children shall be considered."

On April 6, 2016, mother started one-hour, twice-weekly supervised visitation with the minors and was reportedly appropriately engaged with the children.

According to the jurisdiction/disposition report filed April 20, 2016, father had been arrested earlier in the month on charges of grand theft and was in custody for approximately one month. Mother informed the social worker she had a relationship with father from 2012 through 2014 which ended due to father's continuing drug use and

“ongoing arguing.” Mother reported there were domestic violence and substance abuse issues involving both she and father during their relationship, that there was prior Child Protective Services (CPS) history with the minors due to those issues, and that despite the minors’ current removal, mother did benefit from past services by learning to “ ‘set up boundaries and requirements’ ” for father. Mother denied any current drug use and claimed she had been clean and sober since December 2013. However, when confronted with information about her positive test for methamphetamine in May 2015, mother claimed the positive test resulted from medication she had taken for a bladder infection. Mother stated she wanted to reunify with the minors and would benefit from services including anger management, drug and alcohol classes and testing, and parent-child interactive therapy (PCIT) with A.R. The report reiterated the court’s order for supervised visitation, and noted mother was participating in weekly supervised visitation with the minors with no reported issues.

At the jurisdictional/dispositional hearing on April 22, 2016, the court (Hertoghe, J.) extended mother’s temporary restraining order and continued the hearing.

At the continued jurisdictional/dispositional hearing on April 29, 2016, the court (Parker, J.) ordered that mother’s visitation order remain as previously ordered with no modifications, and again continued the hearing.

At the May 13, 2016, continued jurisdictional/dispositional hearing, the court (Howell, J.) granted mother’s request for a three-year restraining order against father. The court sustained the allegations in the petitions, adjudged the minors dependents of the court, bypassed services to father, and granted the Department’s request that mother undergo a psychological evaluation to determine appropriate services, including random drug testing, an AOD assessment, outpatient services, dependency drug court, individual counseling, parenting education, domestic violence classes for victims, anger management, psychotropic medication/evaluation and monitoring, and participation in PCIT with A.R. The court ordered regular supervised visitation for both parents,

consistent with the minors' well-being and at the discretion of the Department to determine time, place, and manner of visitation, including frequency and length of visits and who supervises the visits, and further ordered that the parents' visits be separate.

At the July 15, 2016, hearing to review the results of mother's psychological evaluation, minors' counsel requested that mother enroll in individual counseling with a licensed therapist specifically trained in issues of domestic violence. All parties submitted on the social worker's progress report and the psychological evaluation report prepared by Cyrus Moazam, Ph.D., a clinical psychologist. The court adopted the recommendations in Dr. Moazam's report and ordered the Department to ensure "mother's individual therapist is a licensed therapist, and has specific training and counseling on issues of domestic violence."

On September 7, 2016, mother filed requests to change the court's May 13, 2016, order requiring supervised visitation. Mother argued that, despite her progress in reunification services (e.g., completion of anger management, individual counseling, domestic violence, & parenting), she received "under four hours of supervised visitation per week." Mother further argued it was in the minors' best interest to have additional time with their mother in anticipation of being returned to her care, rather than to see their mother only in a supervised setting for just a few hours per week.

The following day, the juvenile court denied mother's requests without prejudice stating the requests lacked new evidence or a change of circumstances and the proposed change of order did not promote the best interests of the minors. The court further stated, "The [May 13, 2016] visitation order is for supervised visitation only. The petition (JV-180) fails to provide any evidence that [the Department] is not appropriately exercising discretion in determining the time, place and manner of visitation. . . . [¶] . . . [¶] The petition also [fails] to establish any of mother's service providers reviewed CPS reports and/or the psychological evaluation of the mother and have addressed and/or considered

those issues/info. Further, the Court sustained a [section] 300(c) petition and this petition fails to provide any information/evidence that the mother has addressed those issues.”

On September 9, 2016, the Department mistakenly modified visitation from observed to unsupervised. On September 28, 2016, the visits were increased to four hours, twice weekly.

The permanency review report recommended that M.S. remain in out-of-home placement and A.R. be returned to mother’s custody under dependent supervision. The report noted the restraining order against father was still active. Mother was reportedly employed and living in a home with the paternal grandparents and the paternal great-grandfather. Mother completed a 13-week domestic violence course, a 12-week course in anger management, 13 sessions of parenting education, and 10 sessions of individual counseling, and was reportedly clean and sober for the past three years. The psychological evaluation completed on June 18, 2016, concluded mother was mentally capable of benefiting from services and adequately parenting the minors.

At the six-month review hearing on October 28, 2016, the court continued the matter and ordered the Department to provide additional information regarding the Department’s compliance with the court’s order for supervised visitation and whether mother’s counseling was conducted by a therapist trained in issues of domestic violence.

The addendum report filed November 17, 2016, stated mother was referred to Mae Terry, LMFT, a licensed counselor with special training in domestic violence issues. The Department confirmed visitation was modified from unsupervised back to supervised on October 28, 2016, as required by court order, and requested an additional six months of services to mother.

The Department filed a second addendum report on December 1, 2016, confirming mother started individual domestic violence counseling with therapist Mae Terry on November 28, 2016.



At the December 2, 2016, continued prepermanency hearing, after considering the parties' arguments, the court adopted the findings proposed in the November 17, 2016, addendum report and, with respect to mother's visitation, ordered mother "shall have regular visitation with both of the [minor]s as frequent as is consistent with the [minors'] well-being. The Department shall determine the time, place, and manner of visitation, including the frequency of visits, length of visits, whether the visits are supervised and who supervises them. Unsupervised visits if authorized, shall not exceed more than four hours at a time. And there shall be no more than for [A.R.] two four-hour periods of unsupervised visitation if you allow unsupervised visitation" within one week.

The court's written minute order, issued the day of the hearing, stated as follows: "Regular visits as frequent as is consistent with the children's well being. As to [M.S.]: Unsupervised up to two four hour visits in a one week period. As to [A.R.]: Supervised up to two 2 hour visits in a one week period. [¶] [The Department] shall determine the time, place, manner, and by whom they are supervised. [The Department] may consider the children's desires in its administration of the visits."

Mother filed a timely notice of appeal of the court's December 2, 2016, order.

## **DISCUSSION**

As her sole contention on appeal, mother contends there is insufficient evidence to support the juvenile court's order calling for supervised visitation unless otherwise arranged at the Department's discretion. As we shall explain, the claim lacks merit.

### **A. Background**

At the December 2, 2016, continued hearing, mother's counsel stated, "We would be submitting, but we have discussed off the record some issues regarding the visitation that the Court is not -- or is concerned about." After a lengthy discussion of mother's participation in services, counsel requested the court find the Department failed to provide reasonable services "because [mother] was participating in everything she was being given and completed most of it of what she was being given by the Department,

and still is not being able to progress beyond if the Court continues with its original idea that we talked about off the record beyond supervised visitation.” Counsel noted “there is no evidence in the reports or I don’t think any anecdotal evidence that says anything has been negative during the time that the mother was having unsupervised visitation. [¶] I think, in fact, quite the opposite. It’s contained in the report that they were going very well even to the point where at one point the Department was asking for return of one of the children. So I’m not really seeing how we get from completion of all these services to we have got to redo everything and go back to square one as if actually nothing had occurred. I don’t think that nothing has occurred. I think there has been a lot completed by this mother. Certainly, I think there’s been enough that should warrant a lessening of the required visitation to allow the Department to go to unsupervised at an appropriate time.” Counsel further argued mother was willing to do services again, but felt the requirement that visits be supervised was unnecessary.

The court stated as follows: “The issue in this case is that supervised visits were ordered for a very, very specific reason. And this is because this family came to the attention of Child Protective Services at a point in time where [mother] was given the services that we have available. [¶] The parenting classes, the general counseling, the WEAVE, all the exact same services that she’s done again and that didn’t solve the family problems. Dependency was terminated. The family ended up back here again for the exact same issues. [¶] So it makes no sense for the Court to expect the same provision of services to result in different results. If you’re doing the same thing, you should expect the same outcome. So the reasons for supervised visits was to make sure that the Department was able to thoroughly and appropriately assess what’s different this time. What did this individual get from services that she missed the first time. Yes, it’s not just check the boxes, and, oh, she went to WEAVE, therefore things must have changed. [¶] And, you know, I wasn’t the judicial officer that heard the dispositional trial, but I’m seeing the order for supervised visits. I’m fairly certain that the judicial

officer that heard it had the same concerns that I do. It's impossible to know who a dependency social worker is going to be at any given point in time. And sometimes the Court needs to set limits to ensure that there is not an abuse of exercise of discretion and to ensure that there is a careful and thorough assessment so that we don't end up right back exactly where we were. [¶] And in a case such as this one where we end up with the child with a sustained [section] 300(c) petition at six years old because so much damage has been done to the child. Visitation needs to proceed slowly, rather than quickly. [¶] I have no doubt that [mother] can go through the exact same services that she went through before and be able to say all the right things so that her case would move forward. That's not what we really want and need to see. I'm not -- I want to make sure [mother] understands. I'm not accusing her of doing that. But that's the concern of the Court is that going through these services and hearing things a second time increases the likelihood that it's going to look like she's gaining knowledge, but not really then able to translate that and demonstrate change. [¶] So that was also why the Court ordered the psychological evaluation, so we could find out what's going to be different for this individual, and we did get the psychological evaluation back. And the Court did, in fact, say, yes, those recommendations will be made part of the case plan, so I think at this point in time the Department is on track with following through with the July order. Took us a while to get the psychological evaluation and to get the mother in services that I think are a little more intense than what [mother] had before. [¶] So we will see a little more sustained change. . . . [¶] . . . [¶] I don't think that services have been unreasonable. I think that the services in this case are limited by virtue of the fact that we have limited services. And that, yes, the Department has to specifically tailor the services, and I think that we did that by getting the psychological evaluation, and then [the social worker] followed up. [¶] . . . [¶] All right. Ms. Turner [minors' counsel], I am inclined to give the Department a little bit of leeway relative to allowing unsupervised visits for up to four hours at a time with the girls but not beyond that. And I think that

that is in part because in looking, again, through the file in regard to the services that have been completed, the visits that did occur, and the fact that [mother] is now in services with [the counselor], who does have a specialized training, as well as I do want the conjoint counseling and the PCIT to be able to begin. And I don't think PCIT is going to begin without the mother having a little more structure -- unstructured visitation time. I'm fearful they will say we are not close enough to return to start the process. And I would also intend to set a progress report to come back and see where we are to see if we can further lift that restriction."

In response to minors' counsel's inquiry regarding the frequency of unsupervised visits, the Department requested frequency be left to the Department's discretion in order to assess the minors' condition following each unsupervised visit. The court adopted the findings proposed in the November 18, 2016, report and, with respect to mother's visitation, the court ordered mother "shall have regular visitation with both of the [minors] as frequent as is consistent with the [minors'] well-being. The Department shall determine the time, place, and manner of visitation, including the frequency of visits, length of visits, whether the visits are supervised and who supervises them. Unsupervised visits if authorized, shall not exceed more than four hours at a time. And there shall be no more than for [A.R.] two four-hour periods of unsupervised visitation [within one week] if you allow unsupervised visitation." Mother did not object to the order.

### **B. Analysis**

As a preliminary matter, we reject the Department's assertion that mother forfeited her claim by failing to object after the trial court issued the visitation order. A party forfeits a claim that the juvenile court improperly delegated its visitation authority to a third party when he or she fails to object in the juvenile court. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 685-686; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-642.) "The purpose of

this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.] [¶] Dependency matters are not exempt from this rule.” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962.)

Mother did not specifically object to the visitation order after it was issued. However, during the hearing her counsel argued the issue of visitation stating, “We would be submitting, *but* we have discussed off the record some issues regarding the visitation that the Court is not -- or is concerned about,” and concluded mother “believes . . . the requirement for supervised visitation is not necessary.” Having raised the issue during argument, mother was not required to object when the juvenile court rendered its ruling as to visitation.

We therefore turn to the merits of mother’s claim. Mother contends the juvenile court erred when it substituted its own independent judgment for that of the service providers, minors’ counsel, and the judicial officer (Parker, J.) who issued the April 2016 visitation order at disposition; failed to give careful consideration to the issues mother addressed in counseling; was not persuaded by the social worker’s assessment of mother’s positive visits with the minors; and discounted the conclusions reached by mother’s therapist. She further claims the court failed to consider that she was a victim of domestic violence and had requested a restraining order to protect herself and the minors from further attacks by father. We consider each of mother’s claims in the order they were raised, finding none has merit.

Section 362.1 provides in part: “(a) In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] (1)(A) Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation

shall be as frequent as possible, consistent with the well-being of the child. [¶] (B) No visitation order shall jeopardize the safety of the child. . . .” (§ 362.1, subd. (a)(1)(A); *In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 838-839 [visitation may be limited if the juvenile court finds it is not in the child’s best interest].)

A visitation order “necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and length of visitation.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

In visitation matters the juvenile court is accorded broad discretion. We review an order setting visitation for abuse of that discretion. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284; *In re Megan B.* (1991) 235 Cal.App.3d 942, 953.) “ ‘ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” ( *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

As we will explain, the record contains ample evidence supporting the juvenile court’s order for limited or no unsupervised visitation as determined by the Department.

First, we disagree with mother’s claim that the juvenile court substituted its own independent judgment for that of the service providers, minors’ counsel, and the judicial officer who issued the April 2016 visitation order at disposition. As for the latter, the court (Hertoghe, J.) initially ordered supervised visitation as to both parents and stated mother and father “shall visit separately” and “[t]he wishes of the children shall be considered.” Mother commenced one-hour, twice-weekly supervised visits with the minors on April 6, 2016. At the subsequent April 29, 2016, hearing, the court (Parker, J.) ordered that mother’s visitation order remain as previously ordered with no modifications. Finally, at the May 13, 2016, continued hearing, the court (Howell, J.)

again ordered regular supervised visitation for both parents, consistent with the minors' well-being and at the discretion of the Department to determine time, place, and manner of visitation, including frequency and length of visits and who supervises the visits, and further ordered that the parents' visits be separate. We fail to see how the juvenile court (Hertoghe, J.) substituted her independent judgment for the findings and orders of either Judge Parker or Judge Howell, both of whom ordered that visitation be supervised.

Similarly, the court (Hertoghe, J.) considered the opinions of the social workers and service providers as contained in the reports filed by the Department, as well as the social worker's statements at the hearing clarifying mother's progress with services. According to the reports, mother was employed and living with relatives, had consistently tested negative for drugs since March 2016, had successfully completed a psychological evaluation in June 2016 and was deemed "mentally capable to benefit from services and adequately parent her children," and had successfully completed various programs including domestic violence and parenting classes. Additionally, due to the parties' error (later corrected pursuant to court order on Oct. 28, 2016), mother was allowed unsupervised visitation in September 2016 and those visits occurred without incident.

The reports also provided information regarding the minors who were placed together in the home of the maternal aunt and uncle. Both children were reportedly doing well in their placement and were developmentally on track. However, A.R. was experiencing behavioral challenges in home and in school which were initially managed by her caregivers and eventually addressed through therapeutic intervention.

However, mother had only just begun her domestic violence therapy on November 28, 2016. While the Department initially recommended in October 2016 that A.R. be returned to mother under dependent supervision and M.S. continue in out-of-home placement, the Department modified its recommendation a month later to continue both minors in out-of-home placement and provide mother with additional reunification services and time to complete her court-ordered domestic violence counseling.

After considering the statements and opinions of the social workers, service providers, and therapists, the court concluded a slow progression from supervised to unsupervised was appropriate and in the best interests of the minors. In so concluding, the court expressed concern with the fact that mother had participated in and successfully completed “the exact same services” in the prior dependency action. The minors had therefore been returned to her custody in May 2014 and again in May 2015 following a brief detention based on an unsubstantiated supplemental dependency petition. However, the issues resulting in the earlier dependency proceedings—namely, domestic violence and substance abuse—resurfaced, placing the minors at risk of serious physical and emotional harm and resulting in the current dependency proceeding. Put another way, the court was cognizant, as are we, of mother’s prior dependency history as it pertained to mother’s ability not only to participate in and complete services and programs but also to translate those lessons into lasting behavioral changes, and concluded supervised visitation was appropriate until the Department determined unsupervised visits were in the minors’ best interests. “ ‘The trial judge, having heard the evidence, observed the witnesses, their demeanor, attitude, candor or lack of candor, is best qualified to pass upon and determine the factual issues presented by their testimony. This is especially true where the custody of minor children is involved. . . . Where minds may reasonably differ, it is the trial judge’s discretion and not that of the appellate court which must control.’ ” (*In re Marriage of Lewin* (1986) 186 Cal.App.3d 1482, 1492.) We do not substitute our judgment for that of the trial court.

Mother asserts the evidence of her completion of court-ordered services such as parenting class, anger management class, and individual and domestic violence counseling, as well as her completion of a psychological evaluation and consistent six months of negative drug testing, established that unsupervised visitation would be in the minors’ best interests. However, simply complying with the reunification plan by attending the required therapy sessions and parenting classes and visiting the child does



not guarantee return of the child. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143; *In re Joseph B.* (1996) 42 Cal.App.4th 890, 899-901.) While compliance with the plan is a pertinent consideration, it is not the sole concern for the juvenile court, nor is it determinative. (*In re Dustin R.*, at pp. 1139-1140; *In re Joseph B.*, at pp. 899-901.) Rather, the decision to return the child to parental custody depends on the court's assessment of the effect the return would have on the physical and emotional well-being of the child. (§ 366.21, subd. (f).) In light of the circumstances here, including the prior CPS and dependency proceedings, detention of the minors despite mother's prior participation in and completion of services in the prior dependency action, and the impact of the dependency proceedings (past and present) on the minors, it was reasonable for the court to take appropriate steps to carefully control the transition from supervised to unsupervised visits to ensure the well-being of the minors. As the court opined, given the tender age of the minors and the significant "damage" caused by their exposure to domestic violence and substance abuse, "[v]isitation needs to proceed slowly, rather than quickly." Again, the trial court was best suited to make that determination.

Next, contrary to mother's claim, the court gave careful consideration to the opinion of mother's therapist regarding counseling. As discussed above, the court considered the various reports, including the report generated by mother's therapist, Dr. Moazam (attached as an exhibit to an earlier progress report). While Dr. Moazam concluded mother's prognosis was "favorable," he concluded mother should remain under psychiatric care for medication evaluation and monitoring, comply with her case plan, and participate in individual counseling "in order to resolve her pervasive pattern of self-defeating and impulsive behavior." Dr. Moazam noted, "The therapist should remain alert to the fact that [mother]'s defensiveness and addiction tendencies place her at risk for concealing what is really going on in her life. She might downplay the importance of her mental illness and substance abuse problems. She needs to accept responsibility for decisions and actions that have led to removal of her children and develop higher moral

and ethical standards to govern behavior by exploring” these issues. Given these conclusions by Dr. Moazam, the court’s requirement that the transition to unsupervised visitation “proceed slowly” was reasonable.

As for mother’s claim that the court was not persuaded to order unsupervised visitation based on the observing social worker’s positive assessment of visits between mother and the minors, the court considered the evidence, noted “[v]isitation needs to proceed slowly,” and ordered regular visitation with both minors, as frequent as is consistent with the minors’ well-being, with the decision whether visits should be supervised left to the discretion of the Department, but in any event unsupervised visits to be limited to four hours at a time for M.S. and no more than two four-hour periods per week for A.R. Again, the order was reasonable given mother’s prior dependency history and current, on-going participation in services including domestic violence counseling, and we do not substitute our judgment for that of the juvenile court.

Further, mother misstates the evidence when she claims the court discounted the conclusions reached by A.R.’s therapist that the minor’s behavioral issues had been managed and were improving daily without the need for therapeutic intervention. As previously discussed, the October 2016 prepermanency review report stated that while A.R.’s behavioral issues were initially managed without the need for therapeutic intervention, A.R. was rereferred to therapy three months later “due to resuming behavioral challenges in school and home environment,” and her appointment to begin services in that regard was pending.

Lastly, we are not persuaded by mother’s claim that the court failed to give careful thought to the fact that mother was the victim of domestic violence, and that any concerns that she would not protect the minors and allow father to visit in an unsupervised setting were alleviated by her request for a restraining order against father. Whether or not mother was the victim or the aggressor in the many instances of domestic violence between mother and father, the court took great care to ensure that mother was provided

with, fully participated in, and benefited from services, most importantly domestic violence counseling. Given that mother had only recently begun individual domestic violence counseling on November 28, 2016, it was reasonable for the court to limit unsupervised visitation while mother was engaged in that process.

Finally, it is worth noting that the court's visitation order, made just eight months after the initial detention of the minors, did not prohibit unsupervised visits; rather, it allowed the Department to assess the minors after each visit to determine whether unsupervised visitation was appropriate and in the minors' best interests. In light of the circumstances here, the limitation on unsupervised visitation was appropriate and reasonable.

We conclude the evidence supported the juvenile court's exercise of discretion to require limited or no unsupervised visitation as determined by the Department.

#### **DISPOSITION**

The juvenile court's visitation order is affirmed.

s/MURRAY, J.

We concur:

s/BLEASE, Acting P. J.

s/HOCH, J.